IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 100 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAIVADAN RATILAL MANJIWALA THRO' NARENDRA R.MANJIWALA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 100 of 2003

MR NM KAPADIA for Petitioner

MS HARSHA DEVANANI, AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/05/2003

ORAL JUDGEMENT

1. This petition is filed by the brother of the petitioner - detenu, and challenged the order of

detention passed by the Commissioner of Police, Surat City dated 29.11.2002 detaining his brother under the provisions of Sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the "PASA Act"). This petition is supported with the affidavit of Shri Narendra Ratilal Manjiwala dated 15.12.2002

2. Mr.N.M. Kapadia, learned advocate for the petitioner, during the hearing, has taken me through the petition and the documents attached thereto to the petition and according to him, the order of detention passed by the Commissioner of Police deserves to be set aside. Though several contentions raised in the petition, he has placed service only one contention that the privilege claimed by the detaining authority as contemplated under Sub-Section (2) of Section 9 of the PASA Act is not genuine and as there is no contemporaneous material with the detaining authority, while recording such satisfaction, the order of detention deserves to be set aside and the detenu be set free from the detention. As found from the grounds of detention served on the detenu, the detaining authority has recorded satisfaction from the material placed before him. He was satisfied that the detenu is indulging prejudicial activities with effect to the maintenance of the public order and with a view to prevent such prejudicial activities, he was satisfied that the order of detention deserves to be passed against him detaining the detenu under the provisions of PASA Act. The detaining authority was satisfied that the detenu is a confirmed "bootlegger" within the meaning of Section 2(b) of the PASA Act and the detenu is acting prejudicial activities to the maintenance of the public order.

3. The petitioner, in this petition, has annexed various documents namely, the order of detention dated 29.11.2002, the grounds of detention, the material relied upon by the detaining authority, while passing the order of detention, including the statements of the witnesses recorded by the police on 19.11.2002 and 20.11.2002 and the same were verified by the detaining authority himself on 26.11.2002 and the representation of Advocate Shri N.M.Kapadia addressed to the Secretary, Home Department, Sachivalaya, Gandhinagar dated 12.12.2002. Mr.Kapadia, learned advocate for the petitioner has, while challenging the order of detention, contended that the privilege claimed by the detaining authority under Sub-Section (2) of Section 9 of the PASA Act is arbitrary, malafide and not genuine. In the petition, such contention has raised in para-4. As found from the

grounds of detention, the detaining authority has considered the offences registered against the detenu at D.C.B. Police Station vide C.R. No.III-5721/02 for the offences punishable under Sections 66(1)b, 65e of the Prohibition Act and during the prohibition raid carried out by the police in the area of House No.2/820, Hiramodi Street, Sagrampura, Surat, a person named Jayvadan Ratilal Manjiwala, is illegally selling of foreign liquor and on 27.10.2002, the police, in presence of panchas, has raided the said premises and during the said raid, 74 bottles of foreign liquor and 24 tin of bear worth Rs.19,686/-- and cash amount of Rs.5,600/-- of selling liquor were seized. There was no pass or permit for keeping the said foreign liquor/bear to the detenu. The police has arrested the accused i.e. present petitioner in that case, on 27.12.2002. The police has also recorded two statements of the witnesses, wherein the witnesses have highlighted about the prejudicial activities being carried out by the detenu and his associates for unregistered offences. The witnesses have highlighted in their statements about the prejudicial activities made on 18.10.2002 and 29.09.2002 and because of such prejudicial activities at the instance of the detenu, both the witnesses have suffered at the instance of the detenu and at the relevant time, the public order in the area was disturbed. In the statements, the witnesses have, in turn because of the fear at the instance of the detenu, requested not to disclose their identity and the detaining authority himself has verified the said statements of the witnesses personally on 26.11.2002. Accordingly, the detaining authority, on examining the material placed before him, was satisfied that the detenu is acting prejudicial activities to the maintenance of public order and with a view to prevent such activities, he has passed the order by resorting the provisions of PASA Act. The detaining authority has also, on considering the statements of the two witnesses verified by him, claimed the privilege as contemplated under Sub-Section (2) of Section 9 of the PASA Act, by not disclosing their identity, as the witnesses have requested not to disclose identity because of fear at the instance of the detenu. The detaining authority, accordingly in the grounds of detention, has reflected about the narration given by the witnesses in respect of the prejudicial activities made by the petitioner on a particular date, which shows that on respective date, the public order in the area was disturbed because of the prejudicial activities of the detenu. Mr.Kapadia, while place in service the grounds for challenging the order of detention, has, in turn, taken such ground in para-4 of the petition. In para-4, it is the contention raised in

the petition, which shows that "the claim of privilege under Sub-Section (2) of Section 9 of the PASA Act is not genuine or bonafide. The statements of witnesses recorded by the detaining authority and the names and addresses of the witnesses have not been supplied, but however assuming that the detaining authority has supplied the exact date, time and place of the alleged incident as narrated by the witnesses in taking that the said incident occurred in that particular area at particular time and on particular date and if such incident had really happened and if the detenu was really involved in that incident, she would be naturally knowing the witnesses and, therefore, no privilege was required to be claimed regarding the identity of the witnesses. But no such incident ever occurred false statements have been recorded to show involvement of the detenu in disturbing the public order. The detaining authority has accepted the statements of the witnesses as gospel truth without the verification as to whether such incidents had ever occurred or not at the given place and at the given date and time, whether the detenu, really involved in such incident or not, whether the respective witnesses really have any enmity with the detenu or not. Thus the claim of privilege is not bonafide and, therefore, the claim of privilege fails."

4. Ms. Harsha Devanani, learned AGP for the respondents has supported the order of detention passed by the detaining authority. According to her, the detaining authority was justified on recording satisfaction. According to the detaining authority, the detaining authority was satisfied from the material placed before him, which shows that the petitioner is acting prejudicial activities to the maintenance of the public order, as a bootlegger and the detaining authority has, while, verification of the statements of the witnesses, because of the apprehension shown by the witnesses at the instance of the detenu, has rightly claimed privilege by not disclosing their identity and the detaining authority has, in fact, claimed privilege as contemplated under Sub-Section (2) of Section 9 of the PASA Act. She has, accordingly supported the order of detention and prayed for dismissal of the petition.

5. Mr.N.M.Kapadia, learned advocate for the petitioner has placed reliance upon the decision of this Court in the case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh Vs. Commissioner of Police, Ahmedabad and ors, reported in 1997 (1) G.L.H. 1017 and the observation made by this Court at para-5 of the judgment. On relying upon the said decision, this Court

has also disposed of several Special Civil Applications being Special Civil Application Nos.12491 of 2002, 633 of 2003 and 2007 of 2003. In the present case, rule was issued as back as on 10.01.2003 and the rule was made returnable on 13.02.2003. No reply affidavit is filed by the detaining authority till date, dealing with such contentions raised in the petition.

6. I have also perused original file of the detaining authority and no contemporaneous material was with the detaining authority, except the statements of the witnesses, which disclosed about the incident which had occurred at the instance of the detenu where the public order in the area was disturbed. In light of the decision in the case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh [supra] and in absence of such material, this Court has no alternative, but to allow this petition and set aside the order of detention. Accordingly, the petition is allowed. The impugned order dated 29.11.2002 passed by the Commissioner of Police, Surat City is quashed and set aside. The detenu Jaivadan Ratilal Manjiwala is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[D.K.Trivedi,J.]

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